working capital, machinery and equipment or real estate) provided:

1. The loan is amortized to provide repayment of the working capital portion within the 7 years, the machinery and equipment portion within useful life or 15 years, whichever is less, and real estate portion within 30 years.

2. One note represents the unguaranteed portion of the loan. It is permissible to issue as many as 10 notes or the guaranteed portion of the loan.

3. A Form FmHA or its successor agency under Public Law 103–354 449–34, "Loan Note Guarantee," is attached to all notes, including the unguaranteed note.

4. One interest rate (either variable or fixed) is used for the entire loan or one interest rate is used on the guaranteed portion and a different interest rate is used on the unguaranteed portion, subject to the requirements and conditions found in § 1980.423 of this subpart.

5. One of each of the following Forms: FmHA or its successor agency under Public Law 103–354 449–14, FmHA or its successor agency under Public Law 103–354 1940–3, "Request for Obligation of Funds—Guaranteed Loans," FmHA or its successor agency under Public Law 103–354 449–35, and FmHA or its successor agency under Public Law 103–354 1980–19, "Guaranteed Loan Closing Report," is used.

B. To treat the financial package of the borrower as separate loans that are processed as a single application provided:

1. A separate loan is made for each purpose (i.e., working capital, machinery and equipment or real estate). As an example, a working capital loan could be structured as follows:

One note for $XXXX at X% interest due in 7 years representing the unguaranteed portion of the loan, and

Up to 10 notes for $XXXX at X% interest due in 7 years representing the guaranteed portions of the loan.

2. A Form FmHA or its successor agency under Public Law 103–354 449–34 is attached to all notes, including the unguaranteed note.

3. A different interest rate may be used on the guaranteed and unguaranteed portions of the loan, subject to the requirements and conditions found in § 1980.423 of this subpart.

4. Separate Forms FmHA or its successor agency under Public Law 103–354 449–14, 1940–3, 449–35, and 1980–19 are required for each loan. If you have two loans, one for working capital and another for real estate, then a set of these forms will be required for each loan.

C. Form FmHA or its successor agency under Public Law 103–354 449–36, "Assignment Guarantee Agreement," will never be used when the multi-note option is utilized.

D. Par. (b). The State Director will assure that the loan officer reviewing the application fully evaluates the useful life of the collateral offered for the loan when determining maturities for the loan. Loan requests for the maximum maturities could result in collateral obsolescence prior to full repayment of the indebtedness. The loan file must be documented to support the maturity granted for the loan.

[52 FR 6501, Mar. 4, 1987, as amended at 56 FR 8271, Feb. 28, 1991]

§ 1980.425 Availability of credit from other sources.

(a) Inability to obtain credit elsewhere is not a requirement for guaranteed assistance under this subpart.

(b) To be eligible for an insured loan under this subpart, the borrower must be unable to obtain the required credit from private or cooperative sources at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near the borrower's location(s) for loans for similar purposes and period of time. The borrower's inability to obtain such credit elsewhere will be determined in accordance with subpart A of part 1942 of this chapter.

§ 1980.426–1980.431 [Reserved]

§ 1980.432 Environmental requirements.

[See subpart A, § 1980.40 and subpart G of part 1940 of this chapter.]

Administrative

When required by subpart G of part 1940 of this chapter, the approving official will review Form FmHA or its successor agency under Public Law 103–354 1940–20, "Request for Environmental Information," submitted by the borrower and the environmental impact assessment prepared by the environmental reviewer. The approving official will indicate his/her decision as part of the assessment when required. If the approving official determines that an EIS is required, he/she will notify the borrower and lender in writing.

§ 1980.433 Flood or mudslide hazard area precautions.

(See subpart A, § 1980.42.)

Administrative

The State Director is responsible for determining if a project is located in a special flood or mudslide hazard area. Refer to subpart B of part 1806 of this chapter [FmHA or its successor agency under Public Law 103–354 Instruction 426.2].

§ 1980.434 Equal opportunity and nondiscrimination requirements.

(See subpart A § 1980.41.)

Administrative

The State Director will assure that equal opportunity and nondiscrimination requirements are met. If there is indication of noncompliance with these requirements, such facts will be reported by the Compliance Reviewing Officer or FmHA or its successor agency under Public Law 103–354 Official in writing to the Administrator, ATTN: Equal Opportunity Officer.

§§ 1980.435–1980.440 [Reserved]

§ 1980.441 Borrower equity requirements.

(a) A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at loan closing. A minimum of 20 percent tangible balance sheet equity will be required for new businesses at loan closing. For energy projects, the minimum tangible balance sheet equity requirement range will be between 25 percent and 40 percent. Criteria for considering the minimum equity required for an individual application will be based on: existing businesses with successful financial and management history vs. startup businesses; personal/corporate guarantees offered; contractual relationships with suppliers and buyers; credit rating; and strength of the business plan/feasibility study. Where the application is a request to refinance outstanding Federal direct or guaranteed loans, without any new financing, the equity requirement may be determined using adjusted tangible net worth. An application that combines a refinancing loan or guarantee request with a new loan or guarantee request is subject to the standard, unadjusted, equity requirement except as provided in paragraphs (a)(1) or (a)(2) of this section. Increases or decreases in the equity requirements may be imposed or granted as follows:

(1) A reduction in the equity requirement for existing businesses may be permitted by the Administrator. In order for a reduction to be considered, the borrower must furnish the following:

(i) Collateralized personal and corporate guarantees, including any parent, subsidiary, or affiliated company, when feasible and legally permissible, and

(ii) Pro forma and historical financial statements that indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(2) The approval official may require more than the minimum equity requirements provided in this paragraph if the official makes a written determination that special circumstances necessitate this course of action.

(b) The equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the balance sheet.

(c) The equity requirement must be determined using balance sheets prepared in accordance with GAAP and met upon giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced, as of the date the loan is closed; a certification to this effect is required of all guaranteed lenders.

(d) The modified formula for determining whether the equity requirement is met, "adjusted tangible net worth," may be used only in cases where the guarantee requested is for a loan, the proceeds of which are to be used entirely to refinance a debt owed to the Federal government or Federally guaranteed debt. In all other situations, the equity requirement must be determined using tangible net worth.

[71 FR 33187, June 8, 2006]

§ 1980.442 Feasibility studies.

A feasibility study by a recognized independent consultant will be required for all loans, except as provided in this paragraph. The cost of the study will be borne by the borrower and may be paid from funds included in the loan. The loan approval official may make an exception to the requirement of a feasibility study for loans to existing